

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NOS. F307547 and F313459

SHEBRENA S. GREEN, EMPLOYEE

CLAIMANT

**MID-AMERICA PACKAGING,
EMPLOYER**

RESPONDENT

**SENTRY INSURANCE COMPANY,
INSURANCE CARRIER**

RESPONDENT NO. 1

**CONTINENTAL CASUALTY CO./CNA,
INSURANCE CARRIER**

RESPONDENT NO. 2

OPINION FILED FEBRUARY 1, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on November 3, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant appeared Pro Se.

Respondent No. 1 represented by Mr. Joseph H. Purvis, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. John P. Talbot, Attorney at Law, Pine Bluff, Arkansas.

A hearing was held on November 3, 2004, to determine the compensability of claimant's alleged September 9, 2002, injury and, if compensable, to determine which respondent-carrier bears liability.

The parties stipulated to the existence of the employee-employer relationship on September 9, 2002. They further stipulated that claimant was earning an average weekly wage of \$476.40.

Claimant contends that she sustained an injury as a result of a specific incident, which is identifiable by time and place of occurrence. Claimant contends that she sustained injuries to her arms as a result of lifting heavy bags during the course of her employment on September 9, 2002. Claimant seeks temporary total disability benefits from July 11, 2003, through February 28, 2004, as well as attendant medical benefits.

Respondent No. 1, Sentry Insurance Company, contends that the claimant did not suffer a compensable injury on or about September 9, 2002. Respondent No. 1 further contends that the claimant did not report an injury on September 9, 2002, and that respondent carrier No. 1 went off the risk for the respondent-employer on November 17, 2002, before claimant sought treatment.

Respondent No. 2, Continental Casualty Company, contends that the claimant did not suffer a compensable injury on or about September 9, 2002. Respondent No. 2 further contends that the alleged injury date is September 9, 2002, and that it did not go on the risk for the respondent-employer until January 9, 2003. As such, Respondent No. 2 contends that it does not have liability in this matter.

STATEMENT OF THE CASE

Claimant, a forty-five-year-old high school graduate with two years of business college, as well as nurse's training, testified that she had been employed with respondent-employer for more than ten years at the time of her alleged injury on September 9, 2002, and was a member of the union. Claimant insists that she injured

herself specifically on September 9, 2002, while inspecting bags at work. She claims she reported this to her supervisor, Lonnie Hayden, on that date; however, she admits that she did not follow through by filing a claim or filling out any paperwork whatsoever. She admitted that she was well-familiar with the policies regarding injuries at work and the reporting thereof, as well as the filing of workers' compensation paperwork. She testified, however, that she made a "conscious decision" not to file, as she feared reprisal from her employer.

Claimant testified that her fear of reprisal from her employer is the reason she did not timely file a claim in this case. However, she did admit that she verbally reported her alleged injury to Mr. Hayden. She testified that she feared filing *paperwork* but not *verbally* reporting her injury. When asked why she feared reprisal from filing in writing as opposed to verbally, she simply stated, "You just have to be there."

Mr. Hayden testified that, although he does not recall the date, he does remember claimant telling him at some point that her arm hurt; however, he contends that she never claimed she had sustained a *work-related* injury. He testified that if she had let him know that it was in any way work-related, he would have asked her to file an accident report. Further, he testified that he knows of no one who has ever been reprimanded for filing a workers' compensation claim with respondent-employer.

Claimant testified that she continued working for over eight months before she

decided to seek medical attention. Claimant testified at the hearing that sometime in January or February of 2003, she bought braces to wear on her arms from a local drug store; however, she admitted that at her deposition, she testified that she had started wearing the braces “immediately after I hurt my arm” in September of 2002.

In April of 2003, claimant finally decided to see a doctor; however, she still did not report a work-related injury to her employer, nor did she mention a work injury having occurred on September 9, 2002, to her doctor. The triage nurse’s emergency room notes of April 23, 2003, from Jefferson Regional Medical Center Quick Care Medical Services, lists claimant’s chief complaint as “complains of pain right arm” and “lifted bags at work”; however, no date is given for the alleged bag-lifting incident. Further, Dr. Bice Matthews’ notes list “no definite trauma.” Claimant contends that she did tell Dr. Matthews that she had hurt herself at work; however, his records reflect “home” as the location of where the accident occurred. Again, no date was given for the alleged injury.

Claimant then saw Dr. Charles Clark on May 20, 2003. Dr. Clark’s records reveal no mention of a work injury in his initial report. Claimant, again, testified that she told Dr. Clark that it was a work-related injury but that he did not write it down. Further, Dr. Clark’s notes reflect that claimant’s pain began in August of 2002, rather than the specific date of September 9, 2002, as claimant insists. Claimant asserts that she told him the specific date of injury, but that he must have written down the wrong

thing. In addition, Dr. Clark's notes reflect *left* elbow pain, as opposed to the *right* arm pain with which she presented to Dr. Matthews in April of 2003. Claimant testified that her pain is in *both* arms and that, again, she told the doctors this all along, but they must not have written it in their notes. Dr. Clark diagnosed claimant with bilateral epicondylitis (tennis elbow), gave her injections, medication, and took her off work for a period of three days (seventy-two hours); Dr. Clark then noted that she could "resume full duty," placing no restrictions on her.

Claimant took her off-work slip from Dr. Clark to Lisa Hankins, the human resources administrator for respondent-employer. Testimony from both claimant and Ms. Hankins revealed that claimant did tell Ms. Hankins in May of 2003 that her arms were hurting. Claimant testified that she could not recall if she told Ms. Hankins it was work-related at that time. Ms. Hankins testified that claimant told her they had been hurting since August of 2002 when she was lifting some bags but mentioned no specific incident having occurred on September 9, 2002, or that she was alleging a work injury. Claimant still did not, at that time, file a workers' compensation claim. Ms. Hankins testified that there is no company policy of reprisal for filing a workers' compensation claim. She testified that the only reason people are moved from their ordinary positions after filing a claim is so that the employer can accommodate any work restriction they may have been placed under by their physician.

Claimant testified that she returned to work following the seventy-two-hour off-work period from Dr. Clark. Finally, on Friday, July 8, 2003, claimant alleged to Ms. Hankins that she had hurt herself at work. A “First Report of Injury” was filled out that day. Claimant was sent to the company doctor, Dr. Jerry Harvey, on that date, as well.

Dr. Harvey noted that claimant had seen Dr. Clark previously for tennis elbow some months prior and that he had given her injections that helped her for a few months. He notes: “There has been [no] recent trauma or injury.” He notes that claimant stated that she had begun having elbow pain the previous August (2002) after having a “particularly busy day at work.” Again, he notes August of 2002, rather than the specific date of September 9, 2002. Dr. Harvey gave claimant injections, Vioxx samples, and released her with no restrictions.

Claimant testified that she returned to work for respondent-employer on July 10, 2003, and worked through July 11, 2003. Claimant testified, as did Ms. Hankins, that claimant called in to work to state that she was quitting on July 14, 2003, because she could not continue working with her arm pain. Claimant filed this workers’ compensation claim on July 28, 2003. Claimant testified that she drew unemployment from July of 2003 through March of 2004, admitting that she had certified that she was able to work in order to obtain those benefits.

Notably, medical records reveal notes from Dr. Clark of September 10, 2003, which again state no work-related cause for claimant's problems. Dr. Clark states as follows:

She has bilateral lateral epicondylitis in both elbows, *etiology of which at this time is not known*. It is essentially felt to be overuse.

[Emphasis added.] Dr. Clark gave claimant further injections on that date and stated that she was not working at that time.

Claimant testified that she presently works for the Pine Bluff Public Library on the computers. She states that although her present job does not involve lifting, she still has arm pain.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she sustained an injury arising out of and during the course and scope of her employment on September 9, 2002, or that any condition from which she suffered was causally related to her employment.

DISCUSSION

There is a requirement in all workers' compensation cases that the claimant must demonstrate a causal connection between the injuries complained of and the work activity. *See Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Moreover, a compensable injury must be established by medical evidence

supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(i). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Clearly, Dr. Harvey based his assessment of claimant's condition on claimant's subjective account of having had a "particularly busy day at work," some time many months prior to seeing either he or Dr. Clark. Further, both doctors noted that claimant had complained of pain beginning in August of 2002, rather than the specific date of September 9, 2004, the date claimant so insistently contends was the date of her alleged injury. Moreover, Dr. Clark states that the "etiology [of her problem] is

unknown.” No report in evidence states objectively that the cause of claimant’s problem was her job with respondent-employer.

In addition, although claiming that she was injured specifically on September 9, 2002, claimant never filed a workers’ compensation claim or even a report of injury or accident until July 8, 2003. Although claimant insists that she feared reprisal from her employer, claimant could give no specific reason for this fear and, further, obviously had no fear of verbally reporting an injury, as she contends she did to her supervisor.

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998).

In this examiner’s opinion, there are simply no objective findings to support the claimant’s claim. The claimant herein simply does not establish by a preponderance of the credible evidence that there is a causal connection between her condition and any work activity in which she was engaged with respondent-employer.

For these reasons, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge